No.

IN

Supreme Court o

OCTOBER

THE AMERICAN TOBACCO
INTERNATIONAL UNION,
WORKERS' INTERNATIONA

—

JOHN PATTERSON, MARIO
JAMES RANDOLPH

AMERICAN

—

EQUAL EMPLOYMENT O

ON WRIT OF CERTIORA
COURT OF APPEALS F

REPLY BRIEF OF PETI
TOBACCO COMPANY AN

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* American Brands, I
to be reported under

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-1199

THE AMERICAN TOBACCO COMPANY, TOBACCO WORKERS' INTERNATIONAL UNION, AND LOCAL 182 OF TOBACCO WORKERS' INTERNATIONAL UNION,

Petitioners,

—v.—

JOHN PATTERSON, MARION MOSHOE, EDMUND PAGE, JAMES RANDOLPH AND PERCY TAYLOR,

Respondents.

AMERICAN BRANDS, INC.,

Petitioner,

—v.—

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF OF PETITIONERS THE AMERICAN TOBACCO COMPANY AND AMERICAN BRANDS, INC.

I.

THE EEOC AGREES THAT § 703(h) APPLIES T POST-ACT SENIORITY SYSTEMS AND FURTHE RECOGNIZES THAT THE BUSINESS NECESSITY DEFENSE IS INAPPROPRIATE IN A SENIORITY SYSTEM CASE

Respondent Equal Employment Opportunity Commissi ("EEOC") agrees with petitioners' fundamental position in th case: seniority systems should not be deprived of § 703(analysis, requiring proof of intentional discrimination, simp because such systems may have been instituted or revised aft July 2, 1965.

Recognizing "the important role that seniority plays collective bargaining, and its historic importance to worker (EEOC Br. 25), and conceding that the "business necessity defense thus is "inappropriate" to seniority system cas (EEOC Br. 33), the EEOC also substantially agrees as to least some of the policy reasons why the result petitioners ur should prevail.

Having made these significant concessions and finding itse unable to support the reasoning of the court of appeals, t EEOC struggles to salvage the result below by concocting "timely challenge to adoption" theory. For the reasons di cussed in Parts II and III, *infra,* the EEOC's artificial theo should be rejected as impractical and totally unfounded policy or in law.

Even the *Patterson* respondents suggest that, because of t national labor policy favoring seniority and collective bargai ing, there may be some "circumstances" under which "senic ity systems adopted after the effective date of Title VII may protected by § 703(h) despite their discriminatory impac (*Patterson* Resp. Br. 92).

Both respondents, however, fail to appreciate the importan of the focus that § 703(h) intent analysis brings to seniori systems. The *Griggs*[1] analysis applied at trial in 1974 a

---

1 *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971).

invoked by the court of appeals simply does not accord seniority systems the special treatment Congress has said they deserve. With its emphasis on statistical adverse impact and perpetuation of effects of past, currently non-cognizable events, the *Griggs* test prematurely ends the inquiry.[2] Under *Griggs* analysis, statistical evidence of disparate impact establishes a *prima facie* case and a conclusive inference that discrimination exists, and the employer and union are then relegated to the task of establishing the restrictive "business necessity" defense, as was required by the courts below,[3] in

---

2 In the search for purposeful discrimination that § 703(h) requires, statistical evidence of disparate impact "may provide an important starting point." *Village of Arlington Heights* v. *Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). But where legitimate reasons are present to explain any statistical disparity, "disproportionate impact alone cannot be decisive, and courts must look to other evidence to support a finding of discriminatory purpose." *City of Mobile, Ala.* v. *Bolden*, 446 U.S. 55, 70 (1980) (citations omitted). Thus, in contrast to the talismanic quality statistics acquire in *Griggs* cases, § 703(h) cases require proof by plaintiffs that the decisionmaker, *i.e.*, the employer and union, "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Personnel Adm'r of Mass.* v. *Feeney*, 442 U.S. 256, 279 (1979).

3 Under the typical business necessity defense as applied below (*see, e.g.*, JA 79-80) to petitioners' lines of progression, the test is "whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business," and whether there are "available no acceptable alternative policies or practices which would better accomplish the business purpose advanced, or accomplish it equally well with a lesser differential racial impact." *Robinson* v. *Lorillard Corp.*, 444 F. 2d 791, 798 (4th Cir.), *cert. dismissed*, 404 U.S. 1006 (1971).

Respondents were found below to have established a *prima facie* case solely through the use of statistics. *See, e.g.*, district court opinion on liability (JA 9) ("[e]ven without specific proof of overt or particular acts of discrimination, the statistical evidence is more than sufficient to establish a *prima facie* case of discrimination for the two branches"); and Widener, J., dissenting in *Patterson II* (JA 122) ("[t]he evidence in this case upon which the district court found liability was statistical. That court did not find 'specific proof of overt or particular acts of discrimination.' The whole case must be read with that background"). Having found discrimination solely from the statistics without any inquiry as to intent, the district court imposed liability for petitioners' failure to prove a business necessity defense, merely noting American's argument "that there is no discrimination and hence, with few exceptions, [that it need] not undertake to show any business necessity" (JA 9).

order to preclude liability for that assumed dis
Such a result severely undermines the national polic
in § 703(h) favoring seniority and collective barga
precludes any meaningful probe of intent and c
discrimination . . . , in the manner of original si
demn . . . action that is not itself unlawful." *City*
Alabama v. *Bolden*, 446 U.S. 55, 74 (1980).

Instead of *Griggs* and business necessity defense
proper inquiry for a post-Act seniority system
proceeds under § 703(h) and focuses on the inten
the time the system was instituted or revised. Whi
below foreclosed this inquiry with respect to t
progression, it directed precisely such an examinati
bona fides of another aspect of the seniority
no-transfer rule. Clearly the same analysis shou
both aspects of this single seniority system. Even
statistical adverse impact, a seniority system
should be protected by § 703(h) if the intent surr
adoption and maintenance of the system is benign
employers and unions would not be entitled to tre
of discrimination as "the legal equivalent of a dis
act which occurred before the statute was passed."
Lines, Inc. v. *Evans*, 431 U.S. 553, 558 (1977).

In this regard it must again be emphasized tha
have never claimed that seniority systems are im
attack, although both respondents would have the
neously believe otherwise.[4] As was previously expl
Petition for a Writ of Certiorari (Pet. 16 n.16)
petitioners urge would by no means ensure *per se* i
post-Act systems. It would remain for the lowe
conduct evidentiary inquiries, as has been ordered
no-transfer rule, to determine whether the prac
'bona fide,' or . . . [whether] differences in empl

---

4 *E.g.*, "[p]etitioners assert that unless they are free
measures as the lines of progression policy without
prohibitions of Title VII, they will be unable to adap
circumstances" (EEOC Br. 13); § 703(h) is an "impen
. . . immuniz[ing]" seniority systems (*Patterson* Resp.

ditions that it has produced are the 'result of an inte
discriminate because of race.' " *California Brewers Ass*
v. *Bryant*, 444 U.S. 598, 611 (1980).

Furthermore, there is simply no merit to the *F*
respondents' contention that unless the result below
victims of discrimination will be deprived of a remedy.
son Resp. Br. 81.) Because § 703(h) "does not foreclos
on the current operation of seniority systems which ar
to challenge as discriminatory," *United Air Lines,*
Evans, 431 U.S. at 560, a system which is not found to
fide under § 703(h) will not be upheld, and the full pa
relief, including an award of retroactive seniority, *F*
Bowman Transportation Co., 424 U.S. 747 (1976),
available.

The findings and record below with respect to pet
lines of progression strikingly demonstrate the diffe
result between a § 703(h) intent analysis and a *Griggs*
and business necessity defense analysis. The courts bel
that six of the nine lines at issue did not meet the "
necessity" test as that test was defined by the court of
in *Robinson* v. *Lorillard Corp.* (*see* n. 3, *supra*), althou
lines did meet that test. Presence or absence of discrin
intent with respect to the adoption and maintenanc
lines was immaterial to the inquiry.

Had such an intent analysis been applied, a differe
quite likely would have obtained. Even the EEOC re
that where seniority principles are at issue, it is "inapp
to apply the 'business necessity' requirement" (EEOC
Rather, where challenge is made to an aspect of a
system, the EEOC describes the proper inquiry as or
looks to whether the practice has a "business justifi
serves "some substantial legitimate interest," or is "r
job performance" (EEOC Br. 40-41). That is, essenti
same inquiry as one which looks to the intent bel
practice. Thus, the EEOC seems to concur that articul
the employer and union of a legitimate "business j
tion" should negate the conclusory inference of discri

animus that arises from a mere statistical
impact or perpetuation under *Griggs*. *See,*
ment of Community Affairs v. *Burdine*
(1981).

Indeed, the lines of progression struc
failure to establish a "business necessity"
satisfied the EEOC's "business justificati
testimony offered by respondents' own
provided strong support for a finding tha
lines had a "business justification," *i.e*
premised on an intent to satisfy business
intent to discriminate. For example, wh
examination for his opinion regarding the
the line of progression which specified tha
had to be a machine operator before
adjuster, respondents' expert stated: "O
understanding of that job, *I think this wo*
not necessary" (Reply App. 1; emphasi
testified that the catcher to examiner-ma
"necessarily be required," although he ac
examiner should also have the qualificati
(Reply App. 2). He testified similarly as to
sion from line searcher to examiner-packi
adt-dryer operator to adt-dryer operator
dryer operator to textile dryer operator
opinion was that first serving in the entr
lines "*would be desirable.* I don't think i
sary . . . but being an assistant *would b*
(Reply App. 2; emphasis added).[6]

---

5 For the convenience of the Court, relev
respondents' expert concerning the lines of pr
an Appendix to this Reply Brief. References t
will be made by citation to "Reply App."

6 The differences perceived by respondents'
six lines which did not meet the business neces
three which did were not substantial. That ex

(footnote conti

Thus, had a § 703(h) intent analysis and a
cation" approach been the touchstone, all
likely have been upheld.

II.

THE "TIMELY CHALLENGE TO
THEORY CONJURED BY THE EEOC
TO RESCUE THE DECISION BELOW S
JECTED AS IMPRACTICAL AND WITI
POLICY OR LAW

Although conceding that the rationale of
peals was "too broad" (EEOC Br. 11), th
nonetheless to conjure a theory in an atte
result below holding petitioners' lines of p
the ambit of § 703(h). In essence, the EEC
Court construe § 703(h) as containing a "di
the decision to *adopt* an aspect of a seniorit
would be consigned to *Griggs* analysis, b
challenged, and "the subsequent employme
in *implementing* the system," (*id.*), which w
§ 703(h) analysis.

This convoluted theory applying different
to decisions "adopting" versus decisions "in
iority systems is impractical and has no supp
law.

(footnote continued from previous page)

"being a learner adjuster prior to an adjuster i
that would be *all right*. It seems to be a *logical*
App. 1; emphasis added). He characterized th
adjuster to overhaul adjuster line simply as "su
all there is to it" (Reply App. 2). Finally, he test
helper-prefabrication to adjuster-prefabrication
"necessary. . . but I think having been assistant
entry to prefab adjuster" (Reply App. 2). Give
can be little question that the six lines would hav
the EEOC's "business justification" formulation

A glaring example of the probl
by the EEOC's theory follows fi
statement that "[t]here is no need
discrimination in connection with
issue here" (EEOC Br. 8 n.14). I
urges this Court to ignore the fact
these cases involved both race a
respect to the operation of the lin

The likely explanation for th
apply its theory to the sex discrim
charges clearly fall outside its "ti
theory. In this case, it is uncon
discrimination charges underlying
in January and February, 1969, th
supporting the *EEOC* case were
(JA 6). Since no charge of *sex* dis
more than 90 days (the period
November 14, 1968 date on whicl
of progression were "adopted"
infra), the sex discrimination ch
EEOC's "timely challenge to adop

Thus, the absurd consequence
its view of the facts of this case
two separate analyses to the same
race discrimination charges in *Pa*
the business necessity defense wo
lines of progression; whereas in t
case the very same system would
The obvious impracticability of ap
the same system demonstrates a fi
ity systems should be analyzed u
when the system was adopted or

---

7 The district court expressly held
justified by any business necessity
tion on the basis of *sex and* race"

In addition, strong policy inte
EEOC's theory. Petitioners have
below consigning post-Act seniorit
pact and business necessity defense
prevail, have a chilling effect on la
tive action. The EEOC's "timely cha
does nothing to alleviate such conce

Before deciding to adopt or r
management and labor, whether un
the rule announced below, would ha
and sexual breakdown within depart
or other seniority units mirrored th
the EEOC's theory, so long as a tin
the practice was adopted, the abse
intent behind the adoption would be
inquiry would be made as to intent.
restrictive holding below, the un
statistics would play under the EEO
an intent inquiry and frustrate the c
labor policy recognizing "the give
bargaining [and] the specific char
business or industry." *California Br
ant*, 444 U.S. at 608. The EEOC's
undermines the "[s]ignificant freed
forded employers and unions *to*
systems" (*id.*; emphasis added).

As a further consequence of the
and unions would be reluctant to un
in seniority systems. Such changes,
persons covered by Title VII, would
the "adoption" of the change were
be consigned to a *Griggs* and busin
ysis, making valueless any laudator
nate discriminatory effects. The
would be to retain pre-Act systems,

were not timely challenge
preserve § 703(h) bona fi

This unfortunate cons
be exacerbated where, as
to the seniority system, s
declining consumer dema
limit promotional opport
way, a statistical "snapsh
only a matter of days aft
change reveals little, if
behind the change. Yet,
change does not become
snapshot is taken. *Cf. Ca*
("surely, what would be
expanding labor market
declining labor market"

---

8 *International Bhd. o*
(1977).

9 The case at bar provi
Negro in the Tobacco
beginning even prior t
thereafter, The Americar
increase promotional op
declining consumer dem
job opportunities (*id.* at

> In the American t
> continued to be rela
> many seniority lists
> promoted to once all-
> frequency in Richmo
> favored at their expe
>
> The facts appear t
> blacks, but that decli
> any significant oppor
>
> The finding of liabil
> Northrup's observations
>
> The present systen
> fair, although it need
> As indicated in the

narrow focus on statistics would preclude any evide

There is, moreover, no distinction between decisio menting" seniority system the statute contains nothi gress intended the "adop entitled to any less protect tation" of that system.[11]

(footnote continued from previ

employees in the Richr been locked in their practices. *This is beca industry generally, and automation, both of w movement of present* added.)

10 The EEOC suggests (*see* challenge to adoption" th *1424, Int'l Ass'n of Mach* case, which involved an limitations in the Nationa different analysis should decisions later "implemen *Lodge No. 1424* held onl labor practice was not act allowed by Congress in t outside that period were ti "adoption" or as a challe *Local Lodge 1424* Court only (362 U.S. at 424 n.15

Our conclusion that t under review are of nec of execution of the agr *on this statute's purp universal applicability presented for decision.*

11 The EEOC argues that i which it claims indicates t Br. 25) in enacting § 703(h acquired" (*id.* at 22) th

adoption or imple
and "not the resu
receive § 703(h) p

The EEOC lam
out of § 703(h) a
sion to adopt a se
'pursuant to' that
exercise is too sli
distinction which
Had Congress int
have expressed th
in the legislative
sions. To the con
legislative history
drawn between th
systems.

In sum, in its c
the EEOC has a
theory which is u
law. It raises the s
the same system
filed. One test d
practice, whereas

(footnote continued f

According to th
seniority system
occurs before su
were to assume
behind § 703(h)
failure to recogn
able amount of
there is active
adoption or revi
that under *Mo*
parties in most
of 240 days. W
period are "leg
and not simply

analysis. The EEC
labor from adopti
economy or indust
provides for makir
past discriminatio
intent that "signif
and unions *to cre*
Brewers, 444 U.S
theory should be r
ble to challenges t
post-Act seniority

THE EEOC'S "T
THEORY SHOU
BEING UNSUPP

Even were one
EEOC's strained
finding below do
Under the time p
filed within 90 day
EEOC's theory u
could not work. C
tioners "developed
lines of progressio
that the charges fil
the *Patterson* race
necessary timely ch

The finding belo
date, however, con
theory. To the exte
the lines' adoption
which concluded t
in effect at Ameri
but was only *ado*

American's general revision of its promotional policies" (JA 142-43; emphasis added; citation and footnote omitted).[12] Since the *Patterson* charges were not filed until *one year after January 1968,* the EEOC's "timely challenge to adoption" theory does not work in this case.[13]

IV.

THE BASES OFFERED BY RESPONDENTS AS "ALTERNATIVE" SUPPORT FOR THE COURT OF APPEALS' JUDGMENT WERE NOT CONSIDERED BELOW AND REQUIRE FURTHER FACT-FINDING

Respondents seek to divert the Court from resolving the important question of § 703(h)'s application to post-Act seniority systems by asserting that two separate "alternative bases" provide "dispositive" support for the judgment below. Neither "alternative basis" was passed upon by the *en banc* court below and for that reason alone should not be considered here.

A. Whether the Lines of Progression Are Part of the Seniority System

The *Patterson* respondents state that "length of time served in the line of progression is not a factor" and that consequently

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12 Solely for purposes of the petition and this appeal, petitioners have conceded simply that the lines of progression "[came] into existence after Title VII's effective date" (Pet. 5 n.5), without specifying any particular date.

13 Contrary to both the January 1968 date and the EEOC's November 14, 1968 date, the full record, as the dissenting opinion below painstakingly documented, is "replete with evidence that the lines of progression existed for many years [even] prior to the effective date of the Act" (JA 162; footnote omitted). A remand to the district court to determine whether the lines antedated Title VII's effective date, or were actually established in January 1968 or on some other date, would have been appropriate. In any event, to the extent there is any finding at all on this issue, it is the January 1968 date found by the court of appeals, not the November 1968 date critical to the EEOC's theory.

the lines merely "impose a requirement of service in a lower job" (*Patterson* Resp. Br. 101). Based on their conception of how the lines actually worked, the *Patterson* respondents maintain the lines are not part of any seniority system, are not entitled to § 703(h) analysis and hence were properly held unlawful "under the *Griggs* rationale" (*id.* at 108).

The EEOC, while stating that it "also agrees" with the position that the lines of progression are not part of the seniority system, implicitly recognizes that the ambiguous state of the record on this issue precludes effective consideration by this Court. Without any citation to the record, the EEOC speculates, with obvious hesitation and uncertainty, that the lines were "*apparently* unlike the usual line of progression seniority scheme" and that "*[a]pparently* one day's service in a bottom job was as much benefit to an employee as 40 years' service" (EEOC Br. 35-36 n.31; emphasis added).

These various assertions notwithstanding, because the current state of the record is not clear on precisely how employees entered and moved within the lines according to seniority, the *en banc* court below expressly refrained from even considering this "alternative basis" (JA 142-43 n.3):

> Plaintiffs have contended that 703(h) has no application to the job lines of progression policy because, as administered, the policy was not a seniority system within contemplation of § 703(h). . . . *This was not, however, a factual issue directly litigated in the case and the record as presently composed is ambiguous on it.* In view of our stated basis for deciding that 703(h) has no application to seniority systems instituted after the effective date of Title VII, *we need not address this as a possible alternative basis for decision.* (Emphasis added.)

This suggested "alternative basis" thus runs contrary to the well-established rule that the Supreme Court will ordinarily refrain from passing upon a question not resolved below. *See, e.g., Youakim* v. *Miller,* 425 U.S. 231, 234 (1976) ("[o]rdinarily, this Court does not decide questions not . . .

resolved in the lower court"); *Bivens* v. *Six Unknown Na cotics Agents,* 403 U.S. 388, 397-98 (1971) ("[t]his questi was not passed upon by the Court of Appeals, and according we do not consider it here"); *Aetna Casualty Co.* v. *Flower* 330 U.S. 464, 468 (1947) (the Court will decline to consid questions "not passed upon by that court [below] nor ad quately presented here"). The court below could not have be more explicit in explaining why it did not consider this que tion, and respondents present no exceptional circumstanc justifying a departure from this Court's usual rule of restrain *See Lawn* v. *United States,* 355 U.S. 339, 362 n.16 (1958 *Duignan* v. *United States,* 274 U.S. 195, 200 (1927).

Because the question of how employees actually exercise their seniority rights to progress within the lines was never " factual issue directly litigated in the case" (JA 142-43 n.3), it not possible for any of the parties to point to any express even implicit findings of fact bearing on this issue. There is n dispute among the parties, however, that seniority governe promotions within the lines. Whether plant or job seniority a combination of the two controlled movement of employe within the lines, all movement was governed by some measu of time served, and thus the lines of progression had nothing common with "an educational standard, an aptitude or phys cal test, or a standard that gives effect to subjectivity." *Califo nia Brewers,* 444 U.S. at 609-10. Rather, a determination who would move within any of the lines always "focuse[d] o length of employment" (*id.*). Employment rights invariab increased as the length of the employee's service increase regardless of whether the standard of measurement was time the plant, time in the line or some other measure of tim served.

As this Court recognized in *California Brewers,* seniori systems "inevitably come in all sizes and shapes." 444 U.S. 608. Moreover, the Congress that enacted § 703(h) did n express a preference for any particular seniority conce (*Teamsters,* 431 U.S. at 355 n.41):

> Then, as now, seniority was measured in a number ways, including length of time with the employer, in particular plant, in a department, in a job, or in a line progression . . . . The legislative history contains suggestion that any one system was preferred. (Citatio omitted.)

The lines of progression here were fully consistent with cc concepts of seniority. Since the principal feature of each line progression was that "preferential treatment [was] dispens on the basis of some measure of time served in employment *California Brewers*, 444 U.S. at 606, the lines were even mo clearly part and parcel of the seniority system than the anc lary 45-week rule accorded § 703(h) analysis in *Californ Brewers*.

B. Whether the Lines of Progression Are Bona Fide Und § 703(h)

The alternative basis urged by the EEOC is that, on t present state of the record, the Court can apply § 703(analysis and determine "that the six lines of progression a not bona fide" (EEOC Br. 37). In support of this argumer the EEOC points to the fact that the district court expressed, 1977, the view that petitioners' seniority system was not bo fide.

However, as the *en banc* court of appeals observed remanding the no-transfer rule for additional proof and a n determination of § 703(h) bona fides, the district court did n properly evaluate petitioners' seniority system under *Tea sters'* teachings (JA 145-46):

> We turn now to the fact that the district court in ruli on the 60(b) motion expressly concluded that in light *Teamsters*, American's seniority system was not bo fide. . . . However, *we do not think that the reco before the district court when it ruled upon the moti justified its specific conclusion that the system was n*

> *bona fide under this test. Certainly there are* record before us express findings of fact th support such a conclusion. Whether there is sufficient to support the requisite findings *doubtful* in view of the understanding of § 703(cation that reigned in this Circuit when the origi was being made. *In consequence, the present re not permit us to conduct a principled review of t court's ruling on this point.*
>
> Because the issue of the branch seniority syst fides only emerged in its present contours after nal record was made, we conclude that the relie by defendants under 60(b) can only be ac reopening the record for additional proof a determination of bona fides in light of *Teamst* phasis added; footnote and citations omitted.)

The same reasoning is equally applicable to the progression aspect of the seniority system. Given the the remand already deemed appropriate by the co peals, therefore, this Court should decline the suggest EEOC to rule on the bona fides of the lines of progr should instead direct the Fourth Circuit to include with the no-transfer rule in the remand for a determ bona fides under § 703(h).

CONCLUSION

For these reasons, the decision of the court o
should be reversed, the EEOC's "timely challenge
tion" theory should be rejected, and the case s
remanded for a determination whether the lines of pr
are bona fide under § 703(h) and not the result of an
to discriminate.

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Inc., and American Brands

January 8, 1982

REPLY APPENDIX

[Excerpts from the July 1974 trial testim Rigassio, an expert witness called on behalf plaintiffs, concerning the "business necessit lines of progression]

[433]

BY MR. MARSH [counsel for *Patterson* plain

* * *

Q. Would you indicate what the opinion i

My question was initially: Do you have a necessity of a person serving as a learne becoming an adjuster?

You said you did?

[434]

A. [JAMES L. RIGASSIO] Yes, I do have a

Q. And what is your opinion, sir?

A. Well, on the basis of my understanding that being a learner adjuster prior to an adju

I would say that would be all right. It see way to do it.

MR. MARSH: Do you want to withdraw yo

MR. LEVIT [counsel for union defendants]:

No. I am going to reserve for cross-examin

BY MR. MARSH:

Q. Would you look at the second job?

A. Learner adjuster?

Q. And tell us whether or not he must hav operator—

A. I would say this: On the basis of my that job, I think this would be desirable but

Q. What about three?

A. The examiner making—thi
position. I don't really feel that
necessarily be required.

I would say having the qualifi
be fine.

[435]

Q. All right. The next job?

A. The next job, as I read it h
again, this is a—to my understa
of job, and I don't really feel
necessary.

Q. And number five?

A. The adt-dryer operator. H
assistant would be desirable. I
necessary. You could have vari
position, but being an assistant w

Q. What about the next one?

A. Textile dryer is the same a
previous one.

Q. I don't believe the next one
overhaul adjuster?

A. Overhaul adjuster, I think
ing or packing adjuster would b
there is to it.

Q. What about number nine?

A. Prefab adjuster. I don't rea
been an oiler prior to being a
assistant, I would say is desirable

Again, you could, perhaps, co
think having been assistant woul
prefab adjuster.

MR. MARSH: Your Honor, I
Mr. Rigassio.

THE COURT: Does the Commi

MR. KARNES [counsel for plai
Honor. We don't have any questi